

**IN THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

**ORDER AMENDING RULE 32
OF THE COURT OF COMMON PLEAS
RULES OF CRIMINAL PROCEDURE**

This 14th day of September 2006, IT IS ORDERED that:

- 1) Court of Common Pleas Rules of Criminal Procedure Rule 32 is amended by deleting the material in brackets and to include the material underlined, as follows:

RULE 32. SENTENCE AND JUDGMENT

(a) Sentence.

(1) *Imposition of Sentence.* Sentence shall be imposed without unnecessary delay, but the Court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. When there is a presentence investigation, the Court shall provide the counsel for the defendant and the Attorney General with the presentence officer's determination, pursuant to the provisions of subdivision (c)(2)(B), of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the Court shall afford the counsel for the defendant and the Attorney General an opportunity to comment upon the presentence officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the Court shall also:

(A) Determine that the defendant's counsel or, when the defendant is acting pro se, the defendant have had the opportunity to read the presentence investigation report made available pursuant to subdivision (c)(3);

(B) Afford counsel for the defendant an opportunity to speak on behalf of the defendant;

(C) Address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence, and

(D) Upon the request of the Attorney General, afford the victim, if present, [where appropriate, an opportunity to be heard.] an opportunity to offer prior comment on the sentencing of a defendant, including the submission of a written or oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family for any offense enumerated in 11 Del.C. § 9401(1) or, with the court's discretion, for any other offense. The Attorney General shall have an equivalent opportunity to speak to the Court. [The victim shall have an opportunity to speak, in accordance with guidelines established by the Court.] Upon a motion that is jointly filed by the defendant and the Attorney General, the Court may hear in camera such a statement by the defendant, counsel for the defendant, or the Attorney General.

(2) *Notification of Right to Appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise a defendant who is not represented by counsel of the defendant's right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the Court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere.

(b) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the Clerk.

(c) Presentence Investigation.

(1) *When Made.* A presentence officer shall make a presentence investigation and report to the court before the imposition of sentence when the court, after considering the benefit of immediate sentencing and whether there is in the record information sufficient to enable a meaningful exercise of sentencing authority, directs. Except with the written consent of the defendant, the report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) *Report.* Unless the court orders a limited investigation, the report of the presentence investigation shall contain:

(A) Information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant;

(B) The classification of the offense and of the defendant under the categories established by the Sentencing Accountability Commission pursuant to 11 Del.C. § 6580 that the presentence officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Accountability Commission; and an explanation by the presentence officer of any factors that may indicate that a sentence of a different kind or of a different length from one within the applicable guideline would be more appropriate under all the circumstances;

(C) Any pertinent policy statement issued by the Sentencing Accountability Commission;

(D) A victim impact statement in accordance with 11 Del.C. § 4331(d);

(E) Information as to restitution in accordance with 11 Del.C. § 4106(a); and

(F) Such other information as may be required by statute or the court.

(3) *Disclosure.* Before imposing sentence, the Court shall allow, the defendant's counsel or, when the defendant is acting pro se, the defendant and the Attorney General an opportunity to read the report of the presentence investigation, including the information required by subdivision (c)(2) but not including any final recommendation as to sentence. The Court shall afford the parties an opportunity to comment on the report and, in the discretion of the Court, to present information relating to any alleged factual inaccuracy contained in it. If the comments or information presented allege any factual inaccuracy in the presentence report, the Court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. At the request of a party a written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Department of Correction.

(d) Plea Withdrawal. If a motion for withdrawal of a plea of guilty or nolo contendere is made before imposition or suspension of sentence or disposition without entry of a judgment of conviction, the Court may permit withdrawal of the plea upon a showing by

the defendant of any fair and just reason. At any later time, a plea may be set aside only by motion under Rule 61.

(e) Partial Confinement; Probation. After conviction of an offense the Court may impose a term of partial confinement or probation if permitted by law, or any other disposition authorized by 11 Del.C. § 4204.

Chief Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge